



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/167333

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**PRELIMINARY RECITALS**

Pursuant to a petition filed July 16, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on August 05, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the petitioner timely appealed FS overpayments established under claim numbers [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED].

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

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Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703  
By: Simone Johnson  
Milwaukee Enrollment Services  
1220 W Vliet St, Room 106  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Corinne Balter  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On February 2, 2015 the agency sent the petitioner a notice stating that she was overpaid \$7,939.00 in FoodShare (FS) benefits under claim number [REDACTED] for the period from January 1, 2013 to December 31, 2013.

3. On February 4, 2015 the agency sent the petitioner a notice stating that she was overpaid \$4,108.00 in FS benefits under claim number [REDACTED] for the period from January 1, 2014 through June 30, 2014.
4. On February 4, 2015 the agency sent the petitioner a notice stating that she was overpaid \$702.00 in FS benefits under claim number [REDACTED] for the period from July 1, 2014 to July 31, 2014.
5. On February 4, 2015 the agency sent the petitioner a notice stating that she was overpaid \$3,021.00 in FS benefits under claim number [REDACTED] for the period from August 1, 2014 to December 31, 2014.
6. On February 4, 2015 the agency sent the petitioner a notice stating that she was overpaid \$1,616.00 in FS benefits for the period from January 1, 2015 to February 28, 2015.
7. Every notice stated that the petitioner had 90 days to appeal the overpayment.
8. The agency alleged that these overpayments were due to an intentional program violation (IPV). On March 18, 2015 the petitioner had a hearing on the IPV. ALJ Peter McCombs found that there was not clear and convincing evidence to sustain the IPV. In his decision, ALJ McCombs specifically stated, "that overpayment is not before me today. [] The Office of the Inspector General's burden of proof is important in this matter because it must do more than show that it is more likely than not that the respondent intentionally violated the FoodShare program's rules." That decision was issued on April 21, 2015. This is within the timeframe in which the petitioner could have timely submitted an appeal on the overpayment.
9. On July 16, 2015 the Division of Hearings and Appeal received the petitioner's appeal.

### **DISCUSSION**

The Department is required to recover all overpayments of public assistance benefits. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(a). The federal FS regulations provide that the agency shall establish a claim against an FS household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(a)(2).

The federal regulation concerning FS overpayments begins: "The State agency shall take action to establish a claim against any household that received an overissuance due to an inadvertent household or administrative error...." 7 C.F.R. § 273.18(b). Once timely and adequate notice is given to the household, the household must appeal within 90 days of the negative action. 7 C.F.R. § 273.15(g); see also Wis. Adm. Code, §HA 3.05(3)(b).

In this case the petitioner did not timely file her appeal. There were five notices of overpayment mailed to the petitioner between February 2, 2015 and February 4, 2015. The Division of Hearings and Appeals did not receive the petitioner's request for hearing until July 16, 2015.

The agency originally alleged that the petitioner had committed an intentional program violation (IPV). Anytime an agency alleges that a person committed an IPV, there is a hearing. The agency sends the person alleged to have committed the IPV a notice with the date and time of the hearing. Regardless of whether the person appears, a hearing is held, and an ALJ determines whether the agency has shown by clear and convincing evidence that the person actually committed the IPV.

In this case, the petitioner participated in the IPV hearing. ALJ McCombs presided over the hearing, and issued a written decision on April 21, 2015. (See ALJ McComb's decision on Case number FOF-163731). ALJ McCombs wrote, "An FS overpayment was asserted in the total amount of \$17,386.00. That overpayment is not before me today, however." ALJ McCombs went on to highlight the heightened burden of clear and convincing evidence at an IPV hearing. He wrote, "The office of the Inspector

General's burden of proof is important in this matter because it must do more than show that it is more likely than not that the respondent intentionally violated the FoodShare program's rules."

The petitioner argues that she believed the overpayment was addressed at the previous IPV hearing. This argument is not convincing given the specific language in ALJ McComb's decision. In addition, ALJ McComb issued his decision within the timeframe in which the petitioner could have timely submitted an appeal on the overpayment. ALJ McComb's decision went out on April 21, 2015. This after the petitioner already received 5 separate notices of overpayments between February 2, 2015 and February 4, 2015. The 90 day time limit for appeal of these overpayments was May 2, 2015 for some of the notices and May 4, 2015 for the other notices. The first time the petitioner submitted an appeal request was July 16, 2015. This is over five months after the overpayment notices, and almost two months after ALJ McComb's decision on the IPV case. This is was well beyond the statutory time limit, and I do not have jurisdiction to review the merits of the overpayment claim.

### **CONCLUSIONS OF LAW**

The petitioner's appeal of FS overpayments established under claim numbers [REDACTED] [REDACTED] and [REDACTED] was untimely.

**THEREFORE, it is**

**ORDERED**

That the petition is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

...

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 24th day of August, 2015

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\sCorinne Balter  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on August 24, 2015.

Milwaukee Enrollment Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability